No. 947

In the Supreme Court of the United States

OCTOBER TERM, 1941

M. HAMPTON MAGRUDER, COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF MARYLAND, PETITIONER

v.

FREDERICK M. SUPPLEE AND ELIZABETH G. SUPPLEE, HIS WIFE

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE PETITIONER

INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statutes and regulations involved	2
Statement	2
Specification of errors to be urged	3
Summary of argument	4
Argument:	
Respondents' payments in discharge of their predecessors' liability for property taxes were not deductible as "taxes" but were part of the cost of the property	5
Conclusion	16
Appendix	17

CITATIONS

Cases:

Atlantic Coast Line R. R. Co. v. *Commissioner*, 2 B. T. A. 892	13
Baltimore v. *Perrin*, 178 Md. 101	15, 16
Baltimore City v. *Jenkins*, 96 Md. 192	12
Brown Co. v. *Commissioner*, 8 B. T. A. 112	13
Burchell v. *Helvering*, 115 F. (2d) 681	9
California Sanitary Co. v. *Commissioner*, 32 B. T. A. 122	9
Carondelet Bldg. Co. v. *Fontenot*, 111 F. (2d) 267	13
Cecil v. *Commissioner*, 100 F. (2d) 896	13
Citizens Hotel Co. v. *Commissioner*, 44 B. T. A. 560	13
Cloquet Co-Operative Society v. *Commissioner*, 21 B. T. A. 744	13
Commissioner v. *Coward*, 110 F. (2d) 725	9
Commissioner v. *Patrick Cudahy F. Co.*, 102 F. (2d) 930	13
Commissioner v. *Plestcheeff*, 100 F. (2d) 62	9
Commissioner v. *Rust's Estate*, 116 F. (2d) 636	10, 11, 14
County Commissioners of Frederick County v. *Clagett*, 31 Md. 210	15
Crown Willamette Paper Co. v. *Commissioner*, 14 B. T. A. 133	13
Crown Zellerbach Corp. v. *Commissioner*, 43 B. T. A. 541	13
Falk Corp. v. *Commissioner*, 60 F. (2d) 204	8

453673—42——1

Cases—Continued. Page

First Bond & Mortgage Co. v. *Commissioner*, 27 B. T. A. 430 9
Friend v. *Commissioner*, 119 F. (2d) 959, certiorari denied, October 27, 1941, No. 608 present Term 13
Gatens Investment Co. v. *Commissioner*, 36 B. T. A. 309 9
Grand Hotel Co. v. *Commissioner*, 21 B. T. A. 890 9
Hancock, John, Mutual Life Ins. Co. v. *Commissioner*, 10 B. T. A. 736 9
Helvering v. *Missouri State Life Ins. Co.*, 78 F. (2d) 778 9
Helvering v. *Schimmel*, 114 F. (2d) 554 ..... 13, 14
Helvering v. *Winmill*, 305 U. S. 79 7
Hopkins v. *Van Wyck*, 80 Md. 7 12
Johnson County Realty Co. v. *Commissioner*, 44 B. T. A. 121, now pending before the Circuit Court of Appeals for the Eighth Circuit 9
Klyce v. *Commissioner*, 41 B. T. A. 194 13
Kohlsaat v. *Commissioner*, 40 B. T. A. 528 10
Leamington Hotel Co. v. *Commissioner*, 26 B. T. A. 1004 9
Lifson v. *Commissioner*, 98 F. (2d) 508, certiorari denied, 305 U. S. 662 8
Merchants Bank Bldg. Co. v. *Helvering*, 84 F. (2d) 478 8
New Jersey v. *Anderson*, 203 U. S. 483 16
O'Neil v. *Commissioner*, 31 B. T. A. 727 13
Parrott Estate Co. v. *McLaughlin*, 89 F. (2d) 188 9
Pyramid Metals Co. v. *Commissioner*, 44 B. T. A. 1087 9
Walsh-McGuire Co. v. *Commissioner*, 97 F. (2d) 983 9
Wells, in re, 4 F. Supp. 329 ..... 15, 16

Statutes:

Annotated Code of Maryland (Flack, 1939), Vol. 2, Article 81:
Section 2 17
Section 6 18
Section 26 ..... 15, 18
Section 46 ..... 15, 18
Section 72 ..... 16, 19
Section 74 ..... 15, 19
Section 76 ..... 15, 19
Section 154 ..... 15, 20
Baltimore City Code (1927), Article 46:
Section 49 15
Code, Public Local Laws of Maryland (Flack, 1939), Vol. 1, Art. 4:
Section 40 ..... 15, 20
Section 171 ..... 15, 22
Income Tax Act of 1913, c. 16, 38 Stat. 114, Sec. II–B 6
Revenue Act of 1916, c. 463, 39 Stat. 756, Section 5 6
Revenue Act of 1918, c. 18, 40 Stat. 1057, Section 214 6
Revenue Act of 1921, c. 136, 42 Stat. 227, Section 214 6

Statutes—Continued

	Page
Revenue Act of 1924, c. 234, 43 Stat. 253, Section 214	6
Revenue Act of 1926, c. 27, 44 Stat. 9, Section 214	6
Revenue Act of 1928, c. 852, 45 Stat. 791, Section 23	6
Revenue Act of 1934, c. 277, 48 Stat. 680, Section 23	6
Revenue Act of 1936, c. 690, 49 Stat. 1648:	
Section 23	17
Section 43	17
Section 48	6
Miscellaneous:	
Cooley, *Taxation* (4th Ed.), Sections 546, 587	12
G. C. M. 6272, VIII–1 Cum. Bull. 170 (1929)	13
G. C. M. 6273, VIII–1 Cum. Bull. 168 (1929)	13
G. C. M. 6667, VIII–2 Cum. Bull. 94 (1929)	7
G. C. M. 7190, VIII–2 Cum. Bull. 143 (1929)	13
G. C. M. 7235, VIII–2 Cum. Bull. 197 (1929)	7
G. C. M. 9459, X–1 Cum. Bull. 169 (1931)	13
G. C. M. 8218, IX–2 Cum. Bull. 106 (1930)	13
G. C. M. 9793, X–2 Cum. Bull. 142 (1931)	13
G. C. M. 15305, XIV–2 Cum. Bull. 80 (1935)	13
G. C. M. 15894, XV–1 Cum. Bull. 90 (1936)	13
G. C. M. 18929, 1937–2 Cum. Bull. 91	7
G. C. M. 21373, 1939–2 Cum. Bull. 82	7
G. C. M. 22613, 1941–1 Cum. Bull. 301	7
I. T. 2908, XIV–2 Cum. Bull. 72 (1935)	13
I. T. 2850, XIV–1 Cum. Bull. 61 (1935)	13
I. T. 2495, VIII–2 Cum. Bull. 98 (1929)	13
I. T. 2643, XI–2 Cum. Bull. 81 (1932)	13
I. T. 2995, XV–2 Cum. Bull. 137 (1936)	13
I. T. 2885 XIV–1 Cum. Bull. 64 (1935)	13
I. T. 3527, 1942–4 Int. Rev. Bull. 3	7
Seligman, *Essays on Taxation* (10th Ed.), p. 12	11
Treasury Regulations 65, promulgated under the Revenue Act of 1924, Article 131	7
Treasury Regulations 69, promulgated under the Revenue Act of 1926, Article 131	7
Treasury Regulations 74, promulgated under the Revenue Act of 1928, Article 151	7
Treasury Regulations 77, promulgated under the Revenue Act of 1932, Article 151	7
Treasury Regulations 86, promulgated under the Revenue Act of 1934, Article 23 (c)–1	7
Treasury Regulations 94, promulgated under the Revenue Act of 1936, Article 23 (c)–1	7, 23

In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 947

M. HAMPTON MAGRUDER, COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF MARYLAND, PETITIONER

v.

FREDERICK M. SUPPLEE AND ELIZABETH G. SUPPLEE, HIS WIFE

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE PETITIONER

OPINIONS BELOW

The opinion of the District Court (R. 3–12) is reported at 36 F. Supp. 722. The *per curiam* opinion of the Circuit Court of Appeals (R. 21) is reported at 123 F. (2d) 399.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on November 12, 1941 (R. 22). The petition for a writ of certiorari was filed Febru-

ary 12, 1942, and was granted March 16, 1942. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

The respondents purchased real estate pursuant to contracts which provided for the apportionment of current real estate taxes between themselves and their vendors. The purchase in each instance occurred after the date of assessment, after the taxes had accrued as a personal liability against the vendors, and after a lien had attached against the property. May respondents deduct any portion of those taxes from their gross income under Section 23 (c) of the Revenue Act of 1936, or should their payments in respect of those taxes be treated as part of the cost of the property?

STATUTES AND REGULATIONS INVOLVED

The statutes and regulations involved are set forth in the Appendix, *infra*, pp. 17–23.

STATEMENT

The facts, as stipulated (R. 1–2), and as set forth in the opinion of the District Court (R. 3–5), may be summarized as follows:

The respondents purchased various parcels of real estate in Baltimore, Maryland, during the years 1936 and 1937. At the time of each purchase, real estate taxes for the current year had

not yet been paid, and respondents arranged for an apportionment of the taxes between themselves and the vendors. Respondents agreed to pay the taxes but the vendors undertook to bear the burden of that portion of the taxes that was arithmetically allocable to the fraction of the year that had already expired. Adjustments were accordingly made in the purchase price that reflected that arrangement.

After the passage of title in each instance, the respondents paid the local authorities the full amounts necessary to discharge the tax liability. They sought deductions in their income tax returns for the portion of those taxes "allocable" to the period after purchase. Respondents kept their books on the cash basis.

The Commissioner of Internal Revenue ruled that the amounts in question were not deductible and that they merely constituted part of the cost of the property. In this suit for refund, the District Court held that the amounts were deductible, notwithstanding that the sales took place after the date of assessment, after personal liability had already accrued against the vendors, and after liens had attached to the property. The court below affirmed, Judge Parker dissenting.

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In holding that the taxpayers were entitled to deduct as taxes paid or accrued within the

years any part of the sums paid to the local taxing authorities.

2. In holding that the payments involved herein were properly designated as taxes rather than capital expenditures constituting part of the purchase prices of the properties.

3. In failing to hold that the taxpayers were not entitled to deduct any part of the sums paid to the local taxing authorities in discharge of the tax liability on the property purchased during the tax years.

4. In affirming the decision of the District Court.

SUMMARY OF ARGUMENT

1. Section 23 (c) of the Revenue Act of 1936 allows a deduction from gross income on account of "taxes," and the Treasury regulations have consistently interpreted the statute as permitting the deduction only to the person upon whom such taxes are "imposed." One may not obtain a deduction by making payment upon the tax liability of another.

In the case of real estate it is the Government's position that the property taxes are "imposed" only upon the person who owns the property on the date of assessment, or the "date of finality" in Maryland. Liability is fixed as of that date; and if the property changes hands thereafter the purchaser may not obtain a deduction on account of his payment of the transferor's taxes. Such

payment would merely constitute an element of cost of the property to the purchaser, and would be reflected in his cost basis.

2. Even if the date of assessment be rejected as controlling, the amounts involved herein may not be deducted for the further reason that liens had attached and that the vendors had become personally liable for the full amounts of the taxes involved prior to sale. In these circumstances, it is plain that respondents' payments were made in order to discharge the tax liability of their predecessors. Those taxes were not imposed upon respondents, and they are therefore not deductible by respondents under Section 23 (c).

ARGUMENT

RESPONDENTS' PAYMENTS IN DISCHARGE OF THEIR PREDECESSORS' LIABILITY FOR PROPERTY TAXES WERE NOT DEDUCTIBLE AS "TAXES" BUT WERE PART OF THE COST OF THE PROPERTY

1. When the real estate was purchased by respondents it had already been assessed for state and city taxes and liability for those taxes had already accrued against the former owners. See *infra*, pp. 14–16. Pursuant to agreement with the vendors, respondents undertook to discharge that liability and they now seek to deduct from their gross income a portion of the amounts which they had thus paid on account of their vendors' liabil-

ity.' The deduction is sought under Section 23 (c) of the Revenue Act of 1936, which provides:[2]

> SEC. 23. DEDUCTIONS FROM GROSS INCOME.
> In computing net income there shall be allowed as deductions:
>
> * * * * *
>
> (c) *Taxes generally.*—Taxes paid or accrued within the taxable year * * *.

The question presented in this case is whether the respondents were paying "taxes" when they made the controverted payments to the local taxing authorities, or were merely discharging a contractual obligation which increased the cost of the property to them. The Treasury Regulations applicable to Section 23 (c) of the Revenue Act of

---

[1] They do not seek to deduct the entire amounts paid. They treated the taxes as spread evenly over the entire calendar year and seek to deduct the portion attributable to that part of the year remaining after the date of purchase.

[2] Identical provisions have appeared in the various revenue acts since 1918. See Section 214 (a) (3) of the Revenue Acts of 1918, 1921, 1924, and 1926; Section 23 (c) of the Revenue Acts of 1928 and 1934.

The Revenue Acts of 1913 (Section II-B) and 1916 (Section 5 (a) Third) permitted deductions for taxes "paid within the year." The addition of the word "accrued" in the later Acts was intended merely to cover the case of taxpayers filing returns on the accrual method. Cf. Sec. 48 (c) of the Revenue Act of 1936 which provides that the terms "paid or incurred" and "paid or accrued" shall be "construed according to the method of accounting upon the basis of which the net income is computed under this Part." Accordingly, since respondents herein are on the cash basis of accounting, the word "accrued" has no application to them.

1936 and to the similar provisions of prior Acts state that "in general taxes are deductible only by the person upon whom they are imposed."[3] In accordance with these regulations the Government has consistently maintained that taxes are deductible only by the person upon whom they are "imposed," and it has treated the owner of the property on the date of assessment[4] as the person upon whom real estate taxes are "imposed." If the property changes hands subsequent to this date and the purchaser pays all or part of the assessed taxes, such payment does not establish a basis for the deduction. In those circumstances the payment is merely an additional element of cost of the real estate, something that the purchaser knew he had to pay in order to acquire and retain the property. It is not unlike the payment of a broker's commission. *Helvering* v. *Winmill*,

---

[3] Treasury Regulations 94, promulgated under the Revenue Act of 1936, Article 23 (c)–1; Treasury Regulations 86, promulgated under the Revenue Act of 1934, Article 23 (c)–1; Treasury Regulations 77, promulgated under the Revenue Act of 1932, Article 151; Treasury Regulations 74, promulgated under the Revenue Act of 1928, Article 151; Treasury Regulations 69, promulgated under the Revenue Act of 1926, Article 131; Treasury Regulations 65, promulgated under the Revenue Act of 1924, Article 131.

[4] The date of assessment may vary from state to state, and a number of rulings have therefore been issued designating the critical dates for various states. See, for example, G. C. M. 6667, VIII–2 Cum. Bull. 94 (1929); G. C. M. 7235, VIII–2 Cum. Bull. 197 (1929); G. C. M. 18929, 1937–2 Cum. Bull. 91; G. C. M. 21373, 1939–2 Cum. Bul. 82; G. C. M. 22613, 1941–1 Cum. Bull. 301; I. T. 3527, 1942–4 Int. Rev. Bull. 3.

305 U. S. 79. The payment will increase the purchaser's cost basis and will be reflected in the computation of gain or loss upon ultimate disposition of the property, but it may not be deducted in the year of payment as a charge against current income.

2. The decisions of the lower courts on this question have resulted in a confusing pattern. The Government has consistently urged that the deduction must be limited to those persons who pay taxes which are assessed while they own the property, and that payment by a subsequent owner cannot give rise to a deduction. Cf. *Falk Corp.* v. *Commissioner,* 60 F. (2d) 204 (C. C. A. 7th); *Merchants Bank Bldg. Co.* v. *Helvering,* 84 F. (2d) 478 (C. C. A. 8th). However, a number of the decisions have refused to accept the Government's position that the date of assessment is the critical date.

Thus, in *Lifson* v. *Commissioner,* 98 F. (2d) 508 (C. C. A. 8th), certiorari denied, 305 U. S. 662, the taxpayer purchased Minnesota real estate in 1933, after May 1, the date of assessment. The property taxes arising out of the assessment became due and payable on January 1, 1934, and the purchaser paid those taxes during 1934. The court disallowed the deduction, holding that the taxes had been "imposed" upon the prior owner. It based its decision, however, upon the ground

that a lien had attached to the property on May 1, 1933, and not upon the ground that the taxes were assessed as of May 1, 1933. And a number of other cases have appeared to turn upon whether a lien had arisen prior to the date of transfer. *Commissioner* v. *Plestcheeff*, 100 F. (2d) 62 (C. C. A. 9th); *Parrott Estate Co.* v. *McLaughlin*, 89 F. (2d) 188 (C. C. A. 9th); *Helvering* v. *Missouri State Life Ins. Co.*, 78 F. (2d) 778 (C. C. A. 8th); *Johnson County Realty Co.* v. *Commissioner*, 44 B. T. A. 121, now pending before the Circuit Court of Appeals for the Eighth Circuit; *First Bond & Mortgage Co.* v. *Commissioner*, 27 B. T. A. 430; *California Sanitary Co.* v. *Commissioner*, 32 B. T. A. 122; *Grand Hotel Co.* v. *Commissioner*, 21 B. T. A. 890; *Leamington Hotel Co.* v. *Commissioner*, 26 B. T. A. 1004; *John Hancock Mutual Life Ins. Co.* v. *Commissioner*, 10 B. T. A. 736; *Pyramid Metals Co.* v. *Commissioner*, 44 B. T. A. 1087. The uncertainty created by these cases has been increased by another group of decisions which appear to hold that the critical fact is whether or not personal liability for the taxes had attached to the former owner prior to the passing of title. *Commissioner* v. *Coward*, 110 F. (2d) 725 (C. C. A. 3d); *Burchell* v. *Helvering*, 115 F. (2d) 681 (C. C. A. 2d); *Walsh-McGuire Co.* v. *Commissioner*, 97 F. (2d) 983 (C. C. A. 6th); *Gatens Investment Co.* v. *Commissioner*, 36 B.

T. A. 309; *Kohlsaat* v. *Commissioner*, 40 B. T. A. 528.

As will be shown in detail, *infra*, pp. 13–16, the respondents herein are not entitled to the deductions if either of the foregoing groups of cases is correct; for, not only had the real estate become subject to liens before sale, but personal liability had attached to the prior owners. However, we urge these considerations only in the alternative, because we believe the correct result should depend simply upon the date of assessment, and not upon any other complicating factors.

The court below disposed of this case in a *per curiam* opinion based upon its decision in *Commissioner* v. *Rust's Estate*, 116 F. (2d) 636 (C. C. A. 4th). There the taxpayer had purchased District of Columbia real estate after the assessment of local taxes. There was no provision in the local law for personal liability to pay real estate taxes, and the majority of the court found that no lien had attached prior to sale. It allowed the vendee to deduct the payment of the taxes. The court expressly rejected the assessment date as determinative and relied upon the parties' agreement to apportion the tax burden; the apportionment, as in the instant case, was in accord with local custom. Although this case involves not only a lien but also the personal liability of the vendor, the District Court herein nevertheless felt that the

Rust's Estate decision was controlling and that the vendees might deduct that portion of the taxes arithmetically allocable to the period following the sale. The *per curiam* affirmance of the court below apparently indicated approval of the view that the parties' contractual arrangement for apportionment of the tax burden was controlling.

We submit that the disposition below misconceives the basis for the allowance of the deduction as well as the nature of real estate taxes. Section 23 (c) allows the deduction only to the person upon whom the local taxes are imposed. And the parties to a sales agreement cannot by contract change the incidence of the local taxes. It is misleading to speak of real estate taxes as being "applicable" to the period following the date of purchase. Real estate taxes are not like rent, and they are not paid for the privilege of occupying the property for any given period of time, such as a year. Real estate taxes are simply one of the many forms of raising revenue for the support of government, and are imposed because the ownership of real estate is an index of capacity to pay. Cf. Seligman, *Essays on Taxation* (10th Ed.), p. 12. They are generally imposed as of a given day, sometimes referred to as the date of assessment, or the "date of finality" in Maryland. As in the case of "tax day" with respect to personal property the facts as they exist on that day are

determinative of liability. Cf. Cooley, *Taxation* (4th Ed.), Secs. 546, 587; *Baltimore City* v. *Jenkins*, 96 Md. 192;[3] *Hopkins* v. *Van Wyck*, 80 Md. 7. Although it is true that the purchasers herein could not retain the property unless the taxes were paid, it is likewise true that they could not retain it without paying the purchase price. It is therefore no answer to say that the property was burdened with the taxes and that respondents in effect became obligated to pay them. To be sure there was such a burden, but it was one that was contractually assumed. Respondents did no more than to discharge the obligation that became fixed prior to purchase, and in so doing they were not paying taxes that were imposed upon themselves within the meaning of the statute.

We submit that the date of assessment, or "date of finality," should be conclusive, and that a purchaser of the property thereafter may not be regarded as the one upon whom the property taxes are imposed. The purchaser pays those taxes only because of a contractual arrangement, express or

[3] That the date of finality is critical was strikingly illustrated in *Baltimore City* v. *Jenkins*. There, the property in question was owned and used by a church on October 1, 1901, the date of finality for the year 1902. In November 1901 the property was sold by the church, but the court nevertheless held that the property was not subject to tax for the year 1902, because it was exempt on the date of finality, October 1, 1901.

implied, and therefore is not entitled to the deduction granted by Section 23 (c).*

3. We have thus far contended that the date of assessment should be determinative in this type of case. It is the result for which the Treasury has

---

* A somewhat similar problem is raised in connection with determining when real estate taxes "accrue" in the accounting sense in the case of taxpayers who keep their books on the accrual basis or in the case of deductions from gross income earned by a taxpayer in the period immediately prior to his death. The decisions of the lower courts and the Board of Tax Appeals on these related questions have similarly failed to adhere to any single consistent theory. See *Friend* v. *Commissioner*, 119 F. (2d) 959 (C. C. A. 7th), certiorari denied, October 27, 1941, No. 608, present Term; *Commissioner* v. *Patrick Cudahy F. Co.*, 102 F. (2d) 930 (C. C. A. 7th); *Carondelet Bldg. Co.* v. *Fontenot*, 111 F. (2d) 267 (C. C. A. 5th); *Cecil* v. *Commissioner*, 100 F. (2d) 896 (C. C. A. 4th); *Helvering* v. *Schimmel*, 114 F. (2d) 554 (C. C. A. 8th); *Atlantic Coast Line R. R. Co.* v. *Commissioner*, 2 B. T. A. 892; *Brown Co.* v. *Commissioner*, 8 B. T. A. 112; *Crown Willamette Paper Co.* v. *Commissioner*, 14 B. T. A. 133; *Crown Zellerbach Corp.* v. *Commissioner*, 43 B. T. A. 541; *Klyce* v. *Commissioner*, 41 B. T. A. 194; *Cloquat Co-Operative Society* v. *Commissioner*, 21 B. T. A. 744; *Citizens Hotel Co.* v. *Commissioner*, 44 B. T. A. 560; *O'Neil* v. *Commissioner*, 31 B. T. A. 727. Cf. G. C. M. 6273, VIII-1 Cum. Bull. 168 (1929); G. C. M. 15305, XIV-2 Cum. Bull. 80 (1935); G. C. M. 15894, XV-1 Cum. Bull. 90 (1936); G. C. M. 6272, VIII-1 Cum. Bull. 170 (1929); G. C. M. 7190, VIII-2 Cum. Bull. 113 (1929); G. C. M. 9459, X-1 Cum. Bull. 169 (1931); G. C. M. 8218, IX-2 Cum. Bull. 106 (1930); G. C. M. 9793, X-2 Cum. Bull. 142 (1931); I. T. 2908, XIV-2 Cum. Bull. 72 (1935); I. T. 2850, XIV-1 Cum. Bull. 61 (1935); I. T. 2495, VIII-2 Cum. Bull. 98 (1929); I. T. 2643, XI-2 Cum. Bull. 81 (1932); I. T. 2995, XV-2 Cum. Bull. 137 (1936); I. T. 2885, XIV-1 Cum. Bull. 64 (1935).

long contended; it represents a sound and comparatively uniform method of disposing of an administratively difficult question. In asking for certiorari the Government had hoped to obtain some such rule of general application which would serve as a guide for the handling of future cases. However, if this Court should reject the date of assessment as controlling, then we submit that the respondents herein are not entitled to the deduction on any other theory. Under local law, liens had become attached to the property prior to purchase and personal liability had become so definitively fixed against respondents' vendors that respondents cannot be treated as having paid "taxes" imposed upon themselves. In a number of the lower court decisions, see *supra*, p. 9, the existence of liens or personal liability prior to purchase has been regarded as decisive of the issue, and if the theories underlying those decisions were followed here, the deductions sought in this case must be denied.

The property purchased on May 10, 1936 is typical. (R. 4.) Respondents thereafter paid both city and state real estate taxes with respect

---

[7] A decision based upon personal liability of the vendor or the existence of liens would present administrative difficulties. In some states personal liability for real estate taxes never attaches. See, e. g., *Helvering* v. *Schimmel*, 114 F. (2d) 554 (C. C. A. 8th); *Commissioner* v. *Rust's Estate*, 116 F. (2d) 636 (C. C. A. 4th). In other states it is often difficult to determine the dates on which liens attach.

to a tax year that had already expired in part.[8] The date of finality for both city and state taxes was October 1, 1935,[9] and the taxes were "due and payable" on January 1, 1936.[10] The prior owner had become personally liable[11] for the full amount of the taxes in question long before the sale to respondents. Indeed, had the prior owner sold the property between October 1, 1935, and January 1, 1936, he would still have remained personally liable, and had he gone into bankruptcy after

---

[8] The state taxes were imposed annually on a calendar year basis. See Ann. Code of Maryland (Flack, 1939), Vol. 2, Art. 81, Sec. 26 (a). Pursuant to Sec. 26 (b), the city taxes were imposed in accordance with local law, which apparently was framed upon a fiscal year basis. See Code, Public Local Laws of Maryland (Flack, 1930), Art. 4, Sec. 40.

[9] Ann. Code of Maryland (Flack, 1939), Vol. 2, Art. 81, Sec. 26 (b), provides that state and local taxes shall have the same date of finality as prescribed by local law. And the date of finality for Baltimore with respect to any tax year is October 1 of the preceding year. See Code, Public Local Laws of Maryland (Flack, 1930), Art. 4, Secs. 40, 171. See also *In re Wells*, 4 F. Supp. 329 (Md.).

[10] See Ann. Code of Maryland (Flack, 1939), Vol. 2, Art. 81, Sec. 46 (b), which provides that state taxes are payable on January 1. Sec. 46 (a) provides that local taxes shall be payable in accordance with local law, and under local law, Baltimore taxes are due on January 1. See Code, Public Local Laws of Maryland (Flack, 1930), Art. 4, Sec. 40.

[11] Ann. Code of Maryland (Flack, 1939), Vol. 2, Art. 81, Sec. 154, goes so far as to provide for an action in *assumpsit* for collection. See also *County Commissioners of Frederick County* v. *Clagett*, 31 Md. 210. Moreover, there are internal indicia of personal liability in Sections 74 and 76 of Art. 81, *supra*. See also Baltimore City Code (1927), Art. 46, Sec. 49. That personal liability exists was recently recognized in *Baltimore* v. *Perrin*, 178 Md. 101, 108.

such sale the taxing authorities would have had a provable claim against him. *In re Wells*, 4 F. Supp. 329 (Md.); cf. *Baltimore* v. *Perrin*, 178 Md. 101, 107; *New Jersey* v. *Anderson*, 203 U. S. 483.

Moreover, both the state and the city had liens against the property from the date the taxes became payable,[12] January 1, 1936.

In these circumstances, respondents are not entitled to deduct the amounts which they paid in satisfaction of a liability that had become so firmly fixed against their predecessor. Even under the narrowest theory of the various lower court decisions, the liability which respondents discharged did not constitute taxes imposed upon them within the meaning of Section 23 (c) of the Revenue Act of 1936.

CONCLUSION

The judgment of the court below should be reversed.

Respectfully submitted.

CHARLES FAHY,
Solicitor General.
SAMUEL O. CLARK, JR.,
Assistant Attorney General.
SEWALL KEY,
ARNOLD RAUM,
MICHAEL H. CARDOZO, IV,
Special Assistants to the Attorney General.

APRIL 1942.

---

[12] Ann. Code of Maryland (Flack, 1939), Vol. 2, Art. 81, Sec. 72.

APPENDIX

Revenue Act of 1936, c. 690, 49 Stat. 1648:

SEC. 23. DEDUCTIONS FROM GROSS INCOME.

In computing net income there shall be allowed as deductions:

* * * * *

(c) *Taxes Generally.*—Taxes paid or accrued within the taxable year, * * *.

* * * * *

SEC. 43. PERIOD FOR WHICH DEDUCTIONS AND CREDITS TAKEN.

The deductions and credits (other than the dividends paid credit provided in section 27) provided for in this title shall be taken for the taxable year in which "paid or accrued" or "paid or incurred", dependent upon the method of accounting upon the basis of which the net income is computed, unless in order to clearly reflect the income the deductions or credits should be taken as of a different period. In the case of the death of a taxpayer there shall be allowed as deductions and credits for the taxable period in which falls the date of his death, amounts accrued up to the date of his death if not otherwise properly allowable in respect of such period or a prior period.

Annotated Code of Maryland (Flack, 1939), Vol. 2, Art. 81:

2. As used in this Article

* * * * *

(20) The phrase "date of finality" shall mean the date as of which taxes are to be levied for the taxable year in question and

upon which assessments become final for such year, subject only to correction as herein authorized.

* * * * *

6. The following property, except as in the next two succeeding sections provided, shall be subject to assessment to the owner and taxation for ordinary taxes in this State and in the county and/or city specified below:

(1) All real properties in this State, by whomsoever owned, in the county and/or city in which the same are situated.

* * * * *

26. (a) All ordinary state taxes shall be levied for the calendar year.

(b) Except taxes required to be levied upon assessments made by the State Tax Commission, all ordinary county and city taxes shall be levied for the same period as now prescribed by local law, and all ordinary state, county and city taxes shall be levied as of the same date of finality as now prescribed by local law * * *.

* * * * *

46. (a) All ordinary county and/or city taxes levied upon assessments made by the county commissioners or by the assessing authority of any city shall be due and payable at the times and in the manner and subject to the same discounts, interest and penalties as now prescribed by local law or ordinance.

(b) All ordinary State taxes levied upon assessments made by the county commissioners or the Appeal Tax Court shall be payable on and after the first day of January of the year for which they are levied; provided that no collector in any county or in the City of Baltimore shall be required

to receive payments of State taxes before the earliest date on which county or Baltimore City taxes falling due in such year may be payable; and all such State taxes not paid before the first day of October in such year shall thereafter carry interest at the rate of one-half of 1 per cent. for each month or portion of a month until paid.

* * * * *

72. All State, county and city taxes on real estate shall be liens on the real estate in respect of which they are levied from the date they become payable * * *

* * * * *

74. Immediately after the first day of January succeeding the date of levy of taxes, the Collector of the several counties, and the City Collector of Baltimore City, shall make out all tax bills which have not been paid with a warning attached thereto that unless the account be paid within thirty days said Collector will proceed to collect the same by distress or execution * * *

* * * * *

76. After the proceeding required by Section 74 or 75 shall have been had, if any taxes or assessment for state and/or county or Baltimore City purposes of any nature or kind whatsoever, levied or charged against any part or parcel of ground, improved or unimproved, held in freehold or by lease, shall not be paid within the thirty-day period after the service of notice required by Section 74 or 75, the Collector shall proceed within six months from the service of said notice to enforce payment of the same by distraint levy or execution upon said parcel of land of the party failing to pay such levy, distraint or execution

to be made upon the premises and notice thereof to be given with a statement attached showing all taxes due, interest, penalties and costs, including that of the levy, to the person so in arrears, or one of them, if more than one, if in possession of the property, otherwise to be conspicuously posted on the premises so to be sold for taxes. * * * The power under this section to sell real estate of a delinquent taxpayer for non-payment of taxes, State, county or city, shall exist notwithstanding the existence of personal property of the delinquent. * * *

* * * * *

154. Any tax may be collected from the person liable under this Article to pay the same by action of *assumpsit* instituted at any time after said tax shall become due and payable, and within the period of limitations prescribed by this Article, and such suit may be maintained notwithstanding the existence of other remedies by way of sale of real estate, or otherwise.

Code, Public Local Laws of Maryland (Flack, 1930), Vol. 1, Art. 4:

40. The Board of Estimates shall, on the first day of October, or as soon thereafter as practicable, in the year nineteen hundred and nineteen, and in each succeeding year, procure from the proper municipal department and shall send, with the said ordinance of estimates, to the City Council, a report showing the taxable basis for the next ensuing fiscal year, and the amount which can reasonably be expected to be realized by taxation for said year. The report shall contain an aggregate statement of all the moneys to be expended dur-

ing the next ensuing fiscal year by the city, as set forth in said ordinance of estimates, as well as of any other sums, if such there be, which the city may be required to expend during the said year for any purpose or purposes not included in the Ordinance of Estimates, and it shall also state the total income which can reasonably be expected to be received by the city for the next ensuing fiscal year from licenses, fees, rents and all other charges, including the amount believed to be collectible from taxes in arrears. The report shall show the difference between such anticipated expenditures and receipts of the city, and shall state a rate for the levy of taxes sufficient to realize the amount required to meet the said difference. In the ordinance making the annual levy of taxes, which ordinance shall be passed by the Mayor and City Council of Baltimore in the month of November in each year, and as soon as practicable after the passage of the Ordinance of Estimates, the Mayor and City Council of Baltimore shall fix a rate of taxation not less than the rate stated in the aforesaid report, so that it shall not be necessary at any time for the city, its officers or agents, to create a floating debt to meet any deficiency, and it shall not be lawful for the city, its officers or agents, to create a floating debt for any such purpose. The taxes levied under said ordinance in the month of November in each year shall be the taxes to be collected for the fiscal year next ensuing after the said month of November, and shall be due and may be paid to the City Collector on or after the first day of January next ensuing. The taxes included in said levy on real estate or chattels real, and on all forms of personal property, includ-

ing shares of stock and other property, valued or subject to valuation by the State Tax Commission, shall be in arrears on the first day of July next ensuing the date of their levy, and the taxes on all forms of property after they become in arrears as aforesaid shall bear interest at the rate of six per centum per annum.

* * * * *

171. The valuation of the property subject to taxation in the City of Baltimore, as it shall appear upon the assessment books of said Court [Appeal Tax Court] on the first day of October in each and every year, shall be final and conclusive, and constitute the basis upon which taxes for the next ensuing fiscal year shall be assessed and levied; provided that the foregoing provision shall not apply to property in the city liable to taxation, and which may have escaped or which may have been omitted in the regular course of valuation, but such property shall be valued and assessed and the owner or owners thereof charged with current taxes and back taxes, not exceeding four years, justly due thereon, whenever the same may be discovered and placed upon the assessment books; and the annual levy for each and every year shall be deemed and taken to have covered and embraced all property which was not assessed, but which ought to have been assessed, for the year for which any such levy was made. The said Court shall, on the first day of October, or as soon thereafter as practicable, in each year, make out and deliver to the City Collector a statement showing the valuation and assessment of all the property subject to taxation in said city, as it shall appear upon the assessment books of

said Court on said first day of October; such statement shall contain a full list of all the real estate as the same has been valued and assessed by blocks, corresponding so far as may be practicable with the block numbers used in the Record Office of the Superior Court of Baltimore City, with the location and description of such piece or parcel of ground so assessed and valued, and also shall contain an alphabetical list of all persons to whom personal property has been assessed. The said statement shall be known as the taxable basis for the next ensuing fiscal year, and after the levy of taxes it shall be designated as the tax roll for said year. Further, the said Appeal Tax Court shall submit to the Board of Estimates on the first day of October, or as soon thereafter as practicable, a statement of the total valuation of the respective classes of property as shown on the annual roll submitted by the Appeal Tax Court of Baltimore to the City Collector. The said Court shall perform such other duties as may be prescribed by law or ordinances not inconsistent with this Charter.

* * * * *

Treasury Regulations 94, promulgated under the Revenue Act of 1936:

> ART. 23 (c)–1. *Taxes.*—Subject to the exceptions stated in this article and articles 23 (c)–2 and 23 (c)–3, taxes imposed by the United States, any State or Territory, or political subdivision of either, possessions of the United States, or foreign countries, are deductible from gross income for the year in which paid or accrued (see section 43). * * * In general taxes are deductible only by the person upon whom they are imposed. * * *

U. S. GOVERNMENT PRINTING OFFICE: 1943